

REMARKS/ARGUMENTS

The Examiner, in the communication dated October 15, 2008, required the election of a single species. Accordingly, Applicants elect with traverse

LiFePO4 as electroactive compound of the claimed formula

A, M, Z and O are present in the claimed formula. A is Li, M is Fe and Z is P.

Please note that Claim 1 is a “process or method” claim and not a “product” claim. Thus, it could be argued that the common inventive concept on which Claim 1 is based is the inventive feature of the claimed process. A, D, M, Z, O, N and F are in a homogeneous precursor that forms the electrode active compound. All of the electrode active compounds embraced by the formula of Claim 1 share a common technical feature; they can be prepared by the same process always involving the same inventive process step regardless of the composite material being prepared.

The features differentiating the claimed process from the processes of the prior art are features inherent to the process and not features of the starting compounds or features of the final composite material. The inventive concept in the instantly claimed process is the thermal treatment step, which must be short as opposed to the prior art that require long periods in order to obtain the desired purity and homogeneity that result in large particle sizes.

The short thermal decomposition steps of the claimed process results in small particle sizes that are highly pure and highly homogeneous.

Applicants request that should the elected species be found allowable, the Examiner expand the search to include non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to a double-patenting ground of rejection 35 U.S.C. §121, *In re Joyce* (Commr. Pat. 1957) 115 USPQ 412.

The Examiner alleges that the species recited in the claims are patentably distinct. However, the burden of proof is on the Office to provide reasons and/or examples to support any conclusions with regard to patentable distinction M.P.E.P. §803.

Applicants respectfully traverse the election/restriction requirement on the grounds that no adequate reasons and/or examples have been provided to support patentable distinctness. Rather, the Office merely stated conclusions.

Accordingly the Office has failed to meet the burden necessary to sustain the election requirement, and the Office has not shown that a burden exists in searching all of the species.

Further M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden the Examiner must examine it on its merit even though it includes claims to distinct and independent inventions.

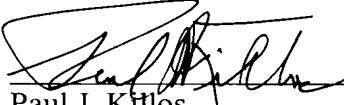
Applicants submit that a search of the entire Claim 1 would not constitute a serious burden on the Office.

In chemical cases, a specified group of materials which do not necessarily belong to an otherwise class can be claimed together. Separate substances, which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics should be examined together if they have at least one property in common which is mainly responsible for the claimed relationship. The same utility in a generic sense suffices.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the restriction/election to be proper there must be patentable differences between the species as claimed. M.P.E.P. §808.01(a). Applicants' election is for examination purpose only.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

  
Paul J. Killos  
Registration No. 58,014

Customer Number

22850

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)